VIRGINIA LAW REGISTER

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A Curious Complication.

The dual nature of our government and the complications that arise therefrom present strange questions which only the highest tribunal in the land can answer. How far the general government can bind the States as to their internal affairs by treaties with foreign powers is one question which has never been answered, though many attempts have been made to do so. "Treaties" under the Constitution are classed with the "supreme laws of the land," and one school of lawyers has held that no law of any state can nullify any part of a treaty made by the general government. The question is quite acute now in view of the California laws as to aliens holding land—these laws being aimed at the Japanese with whom we have a treaty which seems to permit such holding by people of that nation. We do not propose to argue the question one way or another, but to express wonder that a question of this character has never reached the Supreme Court of the United States.

But a more serious question just now presents itself on the Texas border. Suppose Governor Colquitt carries out a veiled threat he has made more than once and sends his Texas Rangers across the Mexican border and captures or shoots a few federal or rebel Mexican troopers. Is this an act of war on the part of our government? The State of Texas is an integral part of the Union, but has no power to declare war. What can the general government do? It can, of course, disclaim the act of the State and offer redress. What sort of redress? To deliver the guilty rangers to the Mexican government as murderers, in case a few "greasers" are killed? The country would be up in arms against such a suggestion and Texas would rebel against it. Of course the general government could offer a monetary redress, as it did in the case of the Italians killed in the anti-Italian riots in New Orleans. But suppose Mexico refused the indemnity and de-

manded the persons of the slayers, as this government would do in a similar case? Texas would protect them. The strong arm of this government would call out first the marshals of the United States courts, then the army, and civil war would be the result unless one side or the other surrendered. Public sentiment would undoubtedly be on the side of the State, and every well-thinking man would revolt at the idea of delivering our citizens to a semi-barbarous crowd to be put to death beyond the peradventure of a doubt, even though they had been guilty of a grave breach of international law. What remedy can be suggested to legally prevent such action on the part of a State government? We confess our inability to even guess at an answer. Can any one aid to enlighten our ignorance?

Old Foes in New Places and with New Faces.

The Supreme Court of the United States, one or more of whose members are of the Roman Catholic persuasion, are faced with a question which for many centuries gave rise to innumerable troubles and produced statute after statute. But the point to be decided is to be decided upon a theory of law which the parliaments passing the various Statutes of Mortmain never considered, i. e., "public policy." It is true these statutes were passed because then, as now, the things complained of were against the good of the state, but "public policy" was an unknown term in those days. The question is whether the vows of the Roman Catholic Order of St. Benedict, which pledge a man to poverty and which practically amount to the assignment of his entire estate over to that order, are valid or not, and whether after the death of a member of that order his next of kin or his Order are entitled to his estate.

A Benedictine—Father Wirth—died at Springfield, Minn. His property, consisting of income from books he had written, was claimed by the Benedictine Order by virtue of the vows which he had taken, pledging himself to poverty and agreeing that the order should possess all of his property. A niece and nephew contended that they were entitled to the estate of the deceased monk because the courts could not enforce such vows as against

public policy. The attorneys for the Order claim that the Order is a vast charitable organization, and point to its achievements as showing that it is not against public policy.

We have not seen the record and do not know whether the monk made a deed of gift to his Order, or simply took vows, the effect of which was to bind him to turn over all of his earnings to it. In the first case—certainly in Virginia—such an assignment to such an organization would not be good; and we cannot see how any property could pass by a mere vow, especially when the "vower" died intestate.

But the Roman Catholic members of the Court are faced by their religious views on one side—these Orders being held to be of great usefulness to the Church and in the salvation of men's souls, and such vows being recognized and indeed approved by the Supreme Pontiff, whose infallible pronunciamento has pronounced the vows absolutely binding and therefore not against public policy from the church's standpoint. As good Catholics they are bound to regard these vows as binding on those who take them to the last and fullest extent. But what are they to say when on a fair argument from the strictly legal standpoint they appear to be from the mere civil standpoint absolutely void? Is the law of church—which to a good Roman Catholic is the law of God—to prevail, or their law which under their oaths they are sworn to see carried out, to override the law of God? It is an awkward dilemma. We shall await the decision in the case with much interest.

Telephonic Trespass.

That the law, as construed by courts, is very elastic we have never had occasion to doubt, but in a recent English decision it does seem to us to have been stretched well nigh to the limit. And yet our sympathy is absolutely with the court in its opinion and we hail it with an approval which we fear is entirely selfish. For if we could sue for damages every person who worries us over the telephone; if we could amerce in a good round sum the "hello girl" who rings us up at midnight and brings us down two flights of stairs in the cold winter clad in our "trailing

garments of the night," to announce she had given the "wrong number," our soul would be satisfied.

In the case of Standard Developments (Lim.) *v.* Collins, decided in February in the Lambeth (England) County Court, Judge Parry held that one who continually rang up another at that other's employer's office, urging him to sign a promissory note, was guilty of "an electical trespass." It is true this was "obiter," as the case went off on another point, but commenting upon the case the *London Law Journal* says:

> "To ring the telephone bell at another person's house in order to put pressure on some person employed there is not only a most offensive thing to do, but an insufferable trespass for which no doubt substantial damages could be recovered by the owner in a proper suit.
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> "The wrong of trespass to a man's house or land (trespass *quare clausum fregit*) may be committed by any form of entry; the slightest crossing of the boundary is sufficient, as, for instance, the putting of a hand through a window or the sitting upon a fence. That is old law, and in a modern case (Gregory *v.* Piper [1829]) it was laid down that it is not essential that there should be any crossing of the boundary at all, if there is some physical contact with the aggrieved person's land—if a single stone is wrongfully laid by a man against his neighbour's wall it is a trespass. And what is true of land or houses applies equally to chattels; a wrong is committed if there is, without lawful justification, any direct physical interference with a chattel in the possession of another person. Physical interference usually consists in some form of physical contact; and a trespass to chattels is actionable *per se* without proof of actual damage. So any unauthorized touching or moving of a chattel is actionable at the suit of its possessor even though no harm ensues."

Liability of Landlord for Defective Stairways.

One who had not examined the books would be surprised to know the number of cases which have been before the courts upon the question of a landlord's liability for injuries sustained by persons on staircases of flats or tenement dwellings, and the somewhat hazy condition of the law on the subject. The leading case

in England is Miller *v.* Hancock, 2 Q. B. 177, decided in 1893, in which a landlord was held liable for injuries to a person who had business with the tenant of a flat owned by the landlord, the stairway of which was defective and who was hurt by a fall caused by this defect, which amounted to a trap. This decision was questioned by the very court which decided it in Huggett *v.* Miers, 2 K. B. 278, decided in 1908, and held practically to have been decided upon the special circumstances of the case and the landlord was exonerated in the latter case because the circumstances indicated that the tenants should have lighted the staircase, not the landlord—lack of light causing the accident.

Two later cases—Mellon *v.* Henderson and Kennedy *v.* Shoth Iron Co., decided in the Court of Session in Scotland in 1913, held the landlord liable for falls caused by defective staircases, because the defects amounted to a trap. But in England two recent cases acquitted the landlord: In one case—Dobson *v.* Horseley, 30 T. L. R. 148, because there was no proof that the landlord had knowledge of the defect; and in the other—Lucy *v.* Bowden—as yet only reported in the newspapers—because the injured party did know of the defect and had complained of it. The *London Law Journal* in summing up the numerous decisions seems to think the law is that the landlord is bound to furnish a reasonably safe staircase or other means of approach, if such means of approach are under his control—the usual case in tenement houses. He is liable for all defects of repair unless the danger is apparent to everybody. But he is not bound to provide a staircase up or down which no one could possibly fall or by the misuse of which by somebody else a person using it could not be hurt.

These decisions, of course, are not in accordance with the Common Law, which required a covenant on the part of the landlord to make him liable in such cases, but the American authorities are all in accord with the English law. It is rather curious but no case has ever arisen in Virginia as to the landlord's liability for failure to keep that part of the building over which he has control in repair. We suppose one reason is, that the flat or tenement house is a comparatively new thing in this State of Homes.

What's the Remedy?

When this number reaches our readers the General Assembly of 1914 will have adjourned. An inspection of its work up to three days of its adjournment fills the patriotic citizen with a feeling of bitter disappointment. There were so many valuable laws which should have been enacted, which failed, and so many of the merest local nature which took up much time, passed. The Enabling Act consumed a vast deal of valuable time which might have been better employed. The Red Light District Bill, which failed of passage, consumed much time which might have been used for far more important matters. Law Reform, amendment of patently defective laws, went by the board. Two-thirds—we might safely say nine-tenths—of the laws enacted were as to matters of mere local concern, with which the General Assembly's limited time ought not to be consumed. Why should not the charters of municipal corporations be amended or changed by the Corporation Commission? Why should not counties and cities be allowed to borrow money by a general law passed under § 65 of Article IV of the Constitution conferring upon boards of supervisors, counties and councils of cities or towns powers of general or special legislation. Section 127 of Article VIII amply protects this power from abuse as to cities. The counties could be protected by a law of similar character. To illustrate the point we are making that much of the legislation now taking up the time of the General Assembly might be by some wise law relegated to a different tribunal and taken care of nearer home, we give the following list of bills which were passed at one day's session and in the passage of which necessarily much time was consumed:

No. 94—To amend the act concerning the Bureau of Insurance, and insurance, guaranty, trust, indemnity, fidelity, security and fraternal benefit companies associations, societies and orders, allowing companies to post surety company bond in place of putting up actual securities.

No. 409—To provide how trust companies may be incorporated, and to provide for general powers for the purpose of doing a trust business in this State in addition to a general banking business.

No. 96—To provide for the protection of turnpike roads that have been treated with bitumen or other artificial binders, from injury by traction engines, tractors or motor trucks.

No. 517—To authorize the Board of Supervisors of Bedford County to borrow money to build a courthouse and clerk's office.

No. 519—To authorize the supervisors of Amherst County to prescribe collars for dogs on which taxes have been paid.

No. 520—To authorize the supervisors of Franklin County to regulate the trapping of game.

No. 497—To amend the charter of the town of Altavista, in Campbell County.

No. 496—To make the public square in the city of Winchester a part of the several magisterial districts of Frederick County for the trial of civil and criminal warrants by the justice of the peace.

No. 505—To authorize the city of Lynchburg and County of Amherst to purchase the bridge across James River at Lynchburg, giving Circuit Courts for County of Amherst and city of Lynchburg concurrent jurisdiction to hear and determine a suit for a sale or partition of the same.

No. 507—To provide for an election on the question of a dispensary in the town of Gretna, in Pittsylvania County. Mr. Lincoln objected to any dispensary measures as putting the State into partnership in the liquor business. Mr. Clement defended the bill as a local option measure, and it was passed.

No. 514—To provide a new charter for the town of Pearisburg, in Giles County.

No. 169—To amend section 2086 of the Code in relation to fishing.

No. 163—To cause all accounts on deposits in banks, when the whereabouts of the depositor is unknown and against which account there has been no check for a period of twenty years, to escheat to the Commonwealth.

No. 152—To amend the act to provide a Bureau of Labor and Industrial Statistics, adding a section to provide a more complete regulation for factory inspection and for the appointment of a factory inspector.

No. 119—To amend the act as to license taxes for moving-picture machines where price of admission does not exceed 10 cents.

No. 510—To define the effect as constructive notice territorially of the records of the Richmond Hustings Court, Part II.

No. 499—To amend the Code in relation to duties of the Superintendent of Public Printing; allowing certain institutions to have their printing done at near-by job printing offices instead of being handled through the Public Printer.

No. 153—To amend the act to define dentistry, eliminating the provision that applicants for dentists' license must be graduate physicians.

No. 71—To amend an act in relation to the purity of commercial fertilizers.

No. 47—To repeal an act of 1906 in relation to turnpike companies.

No. 48—To amend chapter 609 of the act of 1902 relating to turnpike companies.

No. 50—To amend section 1506 of the Code in relation to local school funds; increasing minimum local levy from 10 to 15 cents, and decreasing the maximum from 50 to 40 cents.

No. 72—To prohibiting the running at large of dogs, amended to be optional with each county.

No. 412—To require county clerks in whose offices all overdue taxes on real and personal property and capitation tax shall make a list of such delinquents and deliver it to the county treasurers on or before October 1, 1914.

No. 268—To provide that a tax title, outstanding in name of the Commonwealth, shall not be pleaded as a defense in any action of ejectment or other proceeding at law or in equity.

We wonder what particular case was in question and whether this act is not a dangerous one.

No. 105—To define and regulate the practice of optometry; to provide for the establishment of a board of examiners in optometry for the examination of practitioners of optometry, and for registration and license of practitioners of optometry.

No. 224—In relation to the sale of farm products on commission; regulating commission merchants and providing for their registration and bonding.

No. 421—To amend section 2785 of the Code to provide for terminating a yearly lease on property situated in any subdivision of suburban or other land divided into building lots for residential purposes by either party giving notice in writing three months prior to the end of any year.

No. 340—Authorizing justices of the peace, police justices and judges of courts to sentence persons convicted of vagrancy to work on the roads.

No. 189—To provide for the settlement, registration, transfer and assurance of titles to land, and to establish courts of land registration. The bill provides for the optional introduction in such counties and cities as so elect of what is known as the Torrens system of land registration.

No. 504—To amend an act relating to official receipts for fines.

No. 252—To provide for taking over the property of the Virginia Home and Industrial Schools for Girls, in Chesterfield County, as a State institution; for the operation and management of the home.

No. 420—To amend section 2786 of the Code as to relations between landlord and tenant.

No. 102—To amend section 753 of the Code in relation to State

depositories, adding the Old Dominion Trust Company and the Central National Bank to the list of State depositories.

No. 513—To regulate the shipment of ardent spirits into the State or between points within the State; to regulate the delivery of such ardent spirits; to provide for the filling of orders; to forbid the giving away of ardent spirits or the sale on credit by licensed dealers.

No. 324—Empowering school boards of adjacent school districts to establish joint schools for the use of both districts, and to purchase school property for joint use.

No. 425—To amend the act in regard to negotiable instruments.

Why change this law? Uniformity was the thing most desired and which was at the bottom of the passing of the Negotiable Instrument Act. If constant changes are made the Act itself is practically destroyed.

We think that our statesmen might put their intellects to work and try to have some remedy to conserve the time of the General Assembly, now entirely too short, and have some of the measures of this character taken care of in some different way, even if it required a Constitutional amendment to do it. If in addition to this we could only keep the ministerial and other lobbies away from the General Assembly for one session and remember that sumptuary laws are not wise legislation we might cure some of the crying evils which are clogging the wheels of justice and costing the State and the private citizen untold dollars and causing gross injustice.